Khairil Anuar bin Muda (administrator and beneficiary for the estate of Hj Muda bin Hj Draman) & Anor v Ramli bin Muda & Ors

HIGH COURT (KUALA TERENGGANU) — CIVIL SUIT NO TA-22NCVC-31–07 OF 2019
ABDUL WAHAB J
5 MAY 2020

Civil Procedure — Judgment — Res judicata — Agreement entered into between administrators and certain beneficiaries regarding two petrol stations owned by deceased — Beneficiaries sought for declaration that agreement was void — Whether two petrol stations formed part of deceased's estate — Whether matters raised previously litigated upon and caught by doctrine of res judicata — Whether defendants estopped from raising issue of ownership — Whether defendants could be liable for contempt for failure to give effect to Court of Appeal's orders — Whether present court had inherent jurisdiction and powers to compel performance of Court of Appeal's orders — Whether defendants' counterclaim ought to be dismissed

The plaintiffs were the administrators of the estate of the deceased replacing the previous administrators ie, the first and second defendants. The deceased was the business owner of the two Shell petrol stations. The deceased passed away on 28 April 1985. Upon the demise of the deceased, Shell advised the heir of the deceased to establish a company to enable the supply of petrol and to continue the business operation of the deceased. Following this, two companies were established for the continuation of the deceased's business, namely: (a) Sykt Minyak Kuala Nerus Sdn Bhd; and (b) Sykt Minyak Cabang Tiga Sdn Bhd. The defendants were named as the directors as well as shareholders of the said two companies and the first defendant was entrusted with the business management of the two companies. In 1991, the first defendant claimed that the Kuala Nerus Petrol Station suffered losses and thus entered into an agreement dated 12 December 1991 ('the agreement') wherein the first defendant agreed to settle the debt owed by the deceased for the total sum of RM450,000 in return the Kuala Nerus Petrol Station was to be transferred to him whilst Khatijah bt Yusop ('deceased') settled the debt owed by the deceased for the total sum of RM150,000 in return the Cabang Tiga Petrol Station was to be transferred to Khatijah bt Yusop. The heir of the deceased filed a civil suit at this High Court in 2014 to revoke the agreement and to claimed for the proceeds of the business to be distributed to the heirs following the *faraid* law. The High Court dismissed the said action and the heir of the deceased proceeded to appeal against the said decision. The Court of

A Appeal had subsequently overturned the decision of the High Court and ruled, inter alia, that the agreement was unlawful and void. Dissatisfied with the said decision, the first and second defendant filed a notice of appeal against the said Court of Appeal decision. The Federal Court had, however, dismissed the first and second defendant's application and upheld the decision of the Court of B Appeal. Following the Court of Appeal's decision, the plaintiffs had proceeded to file an originating summons at the High Court ('OS 2018') to replace the first and second defendant as the administrators of the estate of the deceased. It was the plaintiff's allegation that the first defendant had deliberately handed over the business of the Kuala Nerus Petrol Station in an unbefitting manner. C The plaintiffs claimed that they were faced with difficulties in dealing with Shell as they had not been appointed as the director of the Kuala Nerus Petrol Station and Cabang Tiga Petrol Station. Consequent to the defendants' action, the heirs to the deceased had not only failed to enjoy the proceeds of the D deceased's business but had also failed to receive any rental payment for the rental of the Kuala Nerus Petrol Station as well as any allowance payment made by Shell to the Kuala Nerus Petrol Station. The plaintiffs thus filed this action against the defendants. The defendants, on the contrary, contended that the two companies were separate and distinct legal entities from the deceased and E were established after the demise of the deceased as the petrol station operating licenses were automatically terminated upon the demise of the deceased. As such, it was the defendants' submission that the two companies did not form part of the estate of the deceased and the plaintiffs and the heirs of the deceased were not entitled to take over the two companies and/or their shares. The F defendants further submitted that the Court of Appeal did not rule on the issue of shares of the two companies and as such the plaintiffs were not entitled to claim for the shares in the two companies. The defendants had further counterclaimed against the plaintiffs alleging that the plaintiffs had attempted to block and/or interfere with the bank accounts of Kuala Nerus Petrol Station G without the first defendant's authorisation as well as the in the absence of a valid court order which had caused damages and loss of earnings to the defendants. The plaintiffs had contended that the defences raised by the defendants in support of their claim of ownership of the two companies had been litigated in full and had been previously determined by the Court of Appeal.

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Held, allowing the plaintiffs' prayers (a)–(f) and (g)(i)–(ii); and dismissing the defendants' counterclaim:

(1) Based on careful evaluation of the pleadings made by the parties in the previous suits, it was clear to the court that both cases arose from the same I set of facts, background, issues and circumstances. The Court of Appeal decision clearly stated that the same petrol business that was conducted by the deceased had been continued but with the variations, as requested by Shell ie, the setting up of the companies. The Court of Appeal had further ordered that the administrators of the estate of the deceased be

authorised to take over the business management of the petrol stations. Following this, the defendant's notice of motion was unanimously rejected by the Federal Court. Clearly, the issues which the defendants sought to litigate had already been litigated as evident from the findings of the Court of Appeal which was final. It was thus binding on the court and all parties and may not be reopened (see paras 28–29 & 31–32).

(2) The conclusive finding of the High Court OS 2018 was never appealed against by the defendants and was therefore binding on the defendants. If the defendants were dissatisfied with the decision, an appeal ought to have been filed to the Court of Appeal. It was untenable for the defendants to raise the same issues over and over again in the same court in the same case. In the circumstances, the defence raised by the defendants was caught by the doctrine of res judicata and the defendants were estopped from repeatedly raising issues regarding the ownership status of the companies. The court found no ambiguity in the Court of Appeal's decision and it was this court's considered view that it was the intention of the Court of Appeal all along that the companies as established for the purpose of the business management of the petrol stations be taken over by the newly appointed administrators of the deceased's estate (see paras 34–35 & 38).

(3) Based on the Court of Appeal's decision as well as the High Court's decision in OS 2018, the plaintiffs were conferred with the right to manage the businesses of the petrol stations. Further, based on the facts of the case and a thorough scrutiny of the evidence, the defendants had failed and/or refused to cooperate, comply and give effect to the terms of the judgment order made by the Court of Appeal. The defendants had not only failed to cooperate but clearly, based on their conduct over the years, they were delaying and had frustrated the terms of the Court of Appeal's judgment. It was also clear from their statement of defence and the totality of evidence, that the defendants had no interest at all to comply with the Court of Appeal's judgment. The court was of the considered view that as parties were duty-bound to obey an order of the court, until and unless it was varied or set aside, disobedience of such order may subject the defaulting party to committal proceedings. The defendants were estopped from denying the plaintiffs' their legal right to take over the business of the companies in managing the petrol station (see paras 39–43).

(4) In the absence of any legally recognised basis to impugn the continued validity of the Court of Appeal's judgment which remained resolutely unchallenged and unimpaired, its terms must continue to be binding and govern the relationship between the plaintiffs and the defendants in respect of the deceased's petrol station businesses. Any attempt by the defendants to depart or move away from strictly adhering to the same

would thus tantamount to a form of non-compliance, if not an outright transgression. As it transpired, the defendants had indeed failed to abide by the terms of the Court of Appeal's judgment (see paras 44–45).

(5) It was the court's considered view that the plaintiffs sought to give effect to the Court of Appeal's judgment particularly prayers (a), (aa), (b), (c), (d), (g)(i) and (g)(ii) which were necessary to enable the plaintiffs to take over the business of the petrol stations effectively. The Court of Appeal's judgment remained absolutely intact and binding on the parties, the plaintiffs were not seeking to vary or set aside the said Court of Appeal judgment but merely sought further directions from this court to enforce the Court of Appeal judgment. This court had full inherent jurisdiction and powers to compel the performance in obligation and terms by the parties to the said Court of Appeal judgment. A clear injustice would be occasioned to the plaintiffs if their claim was dismissed, for defaulters such as the defendants would instead be allowed to benefit from their own breach, and thus offended the notion of fairness and justice (see paras 46 & 50–52).

(6) Based on the totality of evidence as adduced, the court could not find a shred of evidence adduced by the defendants to establish its claim against the plaintiffs. Therefore, the plaintiffs ought not to be held liable for damages suffered by the defendants in respect of the management of the Stesen Minyak Kuala Nerus Sdn Bhd. In order to give efficacy to the execution of the Court of Appeal's judgment, the court allowed plaintiffs' prayers (a)–(f), (g)(i) and (ii) only. Therefore, the counterclaim by the defendants was dismissed (see paras 59 & 61).

[Bahasa Malaysia summary

Plaintif adalah pentadbir harta pusaka si mati menggantikan pentadbir terdahulu iaitu defendan pertama dan kedua. Si mati merupakan pemilik perniagaan dua stesen minyak Shell. Si mati meninggal dunia pada 28 April 1985. Selepas si mati meninggal dunia, Shell menasihati waris si mati untuk menubuhkan syarikat bagi membolehkan pembekalan petrol dan meneruskan operasi perniagaan si mati. Berikutan itu, dua syarikat telah ditubuhkan untuk kesinambungan perniagaan si mati, iaitu: (a) Sykt Minyak Kuala Nerus Sdn Bhd; dan (b) Sykt Minyak Cabang Tiga Sdn Bhd. Defendan dinamakan sebagai pengarah serta pemegang saham kedua-dua syarikat tersebut dan defendan pertama diamanahkan dengan pengurusan perniagaan kedua-dua syarikat tersebut. Pada tahun 1991, defendan pertama mendakwa bahawa Stesen Minyak Kuala Nerus mengalami kerugian dan dengan itu menandatangani perjanjian bertarikh 12 Disember 1991 ('perjanjian') di mana defendan pertama bersetuju untuk menjelaskan hutang yang terhutang oleh si mati dengan jumlah keseluruhan RM450,000 sebagai balasan Stesen Minyak Kuala Nerus akan dipindahkan kepadanya manakala Khatijah bt Yusop ('si mati') menjelaskan hutang yang terhutang oleh si mati untuk jumlah

keseluruhan RM150,000 sebagai balasan Stesen Minyak Cabang Tiga akan dipindahkan kepada Khatijah bt Yusop. Waris si mati memfailkan saman sivil di Mahkamah Tinggi ini pada 2014 untuk membatalkan perjanjian dan menuntut hasil perniagaan untuk diagihkan kepada waris mengikut hukum *faraid*. Mahkamah Tinggi menolak tindakan tersebut dan waris si mati meneruskan rayuan terhadap keputusan tersebut. Mahkamah Rayuan kemudiannya telah membatalkan keputusan Mahkamah Tinggi dan memutuskan, antara lain, bahawa perjanjian itu menyalahi undang-undang dan tidak sah. Tidak berpuas hati dengan keputusan tersebut, defendan pertama dan kedua memfailkan notis rayuan terhadap keputusan Mahkamah Rayuan tersebut. Mahkamah Persekutuan bagaimanapun telah menolak permohonan defendan pertama dan kedua dan mengekalkan keputusan Mahkamah Rayuan. Berikutan keputusan Mahkamah Rayuan, plaintif telah meneruskan untuk memfailkan saman pemula di Mahkamah Tinggi ('SP 2018') untuk menggantikan defendan pertama dan kedua sebagai pentadbir harta pusaka si mati. Ia adalah dakwaan plaintif bahawa defendan pertama telah dengan sengaja menyerahkan perniagaan Stesen Minyak Kuala Nerus dengan cara yang tidak wajar. Plaintif mendakwa mereka berdepan kesukaran untuk berurusan dengan Shell kerana mereka belum dilantik sebagai pengarah Stesen Minyak Kuala Nerus dan Stesen Minyak Cabang Tiga. Ekoran daripada tindakan defendan, waris defendan bukan sahaja gagal menikmati hasil perniagaan si mati malah gagal menerima sebarang bayaran sewa Stesen Minyak Kuala Nerus serta sebarang bayaran elaun yang dibuat oleh Shell ke Stesen Minyak Kuala Nerus. Oleh itu, plaintif memfailkan tindakan ini terhadap defendan. Sebaliknya, defendan berhujah bahawa kedua-dua syarikat itu adalah entiti undang-undang yang berasingan dan berbeza daripada si mati dan ditubuhkan selepas kematian si mati kerana lesen operasi Stesen Minyak ditamatkan secara automatik selepas kematian si mati. Oleh itu, defendan berhujah bahawa kedua-dua syarikat itu tidak menjadi sebahagian daripada harta pusaka si mati dan plaintif dan waris si mati tidak berhak untuk mengambil alih kedua-dua syarikat dan/atau saham mereka. Defendan seterusnya berhujah bahawa Mahkamah Rayuan tidak memutuskan isu saham kedua-dua syarikat dan oleh itu plaintif tidak berhak menuntut saham dalam kedua-dua syarikat itu. Defendan seterusnya membuat tuntutan balas terhadap plaintif dengan mendakwa bahawa plaintif telah cuba untuk menyekat dan/atau mengganggu akaun bank Stesen Minyak Kuala Nerus tanpa kebenaran defendan pertama serta dalam ketiadaan perintah mahkamah yang sah yang menyebabkan kerosakan dan kehilangan pendapatan kepada defendan. Plaintif telah berhujah bahawa pembelaan yang dibangkitkan oleh defendan bagi menyokong tuntutan pemilikan mereka ke atas kedua-dua syarikat telah dibicarakan sepenuhnya dan telah ditentukan sebelum ini oleh Mahkamah Rayuan.

Diputuskan, membenarkan permohonan (a)–(f) dan (g)(i)–(ii) plaintif-plaintif; dan menolak tuntutan balas defendan-defendan:

(1) Berdasarkan penilaian teliti terhadap pliding yang dibuat oleh pihak-pihak dalam saman terdahulu, jelas kepada mahkamah bahawa kedua-dua kes itu timbul daripada set fakta, latar belakang, isu dan keadaan yang sama. Keputusan Mahkamah Rayuan dengan jelas menyatakan bahawa perniagaan petrol yang sama yang dijalankan oleh si mati telah diteruskan tetapi dengan variasi, seperti yang diminta oleh Shell iaitu penubuhan syarikat-syarikat. Mahkamah Rayuan seterusnya memerintahkan agar pentadbir harta pusaka si mati diberi kuasa untuk mengambil alih pengurusan perniagaan stesen-stesen minyak. Berikutan itu, notis usul defendan telah ditolak sebulat suara oleh Mahkamah Persekutuan. Jelasnya, isu-isu yang defendan cuba untuk dibicarakan telah pun dibicarakan sebagaimana terbukti daripada penemuan Mahkamah Rayuan yang muktamad. Oleh itu, ia mengikat mahkamah dan semua pihak dan tidak boleh dibuka semula (lihat perenggan 28–29 & 31–32).

(2) Penemuan konklusif Mahkamah Tinggi SP 2018 tidak pernah dirayu oleh defendan dan oleh itu mengikat defendan. Jika defendan tidak berpuas hati dengan keputusan itu, rayuan sepatutnya telah difailkan kepada Mahkamah Rayuan. Adalah tidak boleh dipertahankan bagi defendan untuk membangkitkan isu yang sama berulang kali di mahkamah yang sama dalam kes yang sama. Dalam keadaan itu, pembelaan yang dibangkitkan oleh defendan telah ditangkap oleh doktrin res judicata dan defendan telah dihalang daripada berulang kali membangkitkan isu mengenai status pemilikan syarikat. Mahkamah mendapati tiada kesamaran dalam keputusan Mahkamah Rayuan dan adalah pandangan mahkamah ini bahawa adalah hasrat Mahkamah Rayuan selama ini agar syarikat-syarikat yang ditubuhkan bagi tujuan pengurusan perniagaan stesen minyak diambil alih oleh pentadbir harta pusaka si mati yang baru dilantik (lihat perenggan 34–35 & 38).

(3) Berdasarkan keputusan Mahkamah Rayuan serta keputusan Mahkamah Tinggi dalam SP 2018, plaintif telah diberikan hak untuk menguruskan perniagaan stesen minyak. Selanjutnya, berdasarkan fakta kes dan penelitian yang teliti terhadap keterangan, defendan telah gagal dan/atau enggan bekerjasama, mematuhi dan melaksanakan terma perintah penghakiman yang dibuat oleh Mahkamah Rayuan. Defendan-defendan bukan sahaja gagal memberi kerjasama tetapi jelasnya, berdasarkan kelakuan mereka selama ini, mereka melengahkan masa dan telah mengecewakan terma penghakiman Mahkamah Rayuan. Ia juga jelas daripada pernyataan pembelaan mereka dan keseluruhan bukti, bahawa defendan tidak mempunyai kepentingan sama sekali untuk mematuhi penghakiman Mahkamah Rayuan. Mahkamah berpendapat bahawa sebagai pihak yang bertanggungjawab untuk mematuhi perintah mahkamah, sehingga dan melainkan jika ia diubah atau diketepikan, keingkaran perintah itu boleh menyebabkan pihak yang ingkar kepada

prosiding komital. Defendan telah dihalang daripada menafikan hak sah plaintif untuk mengambil alih perniagaan syarikat-syarikat dalam menguruskan stesen minyak (lihat perenggan 39–43).

(4) Sekiranya tiada asas yang diiktiraf di sisi undang-undang untuk menafikan kesahihan berterusan penghakiman Mahkamah Rayuan yang kekal dengan tegas tidak dicabar dan tidak terjejas, syarat-syaratnya mesti terus mengikat dan mengawal hubungan antara plaintif dan defendan berkenaan dengan perniagaan stesen minyak si mati. Sebarang percubaan oleh defendan untuk meninggalkan atau menjauhkan diri daripada mematuhi sepenuhnya perkara yang sama dengan itu akan menyamai satu bentuk ketidakpatuhan, jika bukan pelanggaran terus. Seperti yang berlaku, defendan sememangnya telah gagal mematuhi syarat penghakiman Mahkamah Rayuan (lihat perenggan 44–45).

(5) Adalah pandangan mahkamah yang dipertimbangkan bahawa plaintif berusaha untuk melaksanakan penghakiman Mahkamah Rayuan khususnya rayuan-rayuan (a), (aa), (b), (c), (d), (g)(i) dan (g)(ii) yang diperlukan untuk membolehkan plaintif mengambil alih perniagaan stesen minyak dengan berkesan. Penghakiman Mahkamah Rayuan kekal utuh sepenuhnya dan mengikat pihak-pihak, plaintif tidak ingin mengubah atau mengetepikan penghakiman Mahkamah Rayuan tersebut tetapi hanya mendapatkan arahan lanjut daripada mahkamah ini untuk menguatkuasakan penghakiman Mahkamah Rayuan. Mahkamah ini mempunyai bidang kuasa dan kuasa sepenuhnya untuk memaksa pelaksanaan mengikut kewajipan dan syarat oleh pihak-pihak kepada penghakiman Mahkamah Rayuan tersebut. Ketidakadilan yang jelas akan timbul kepada plaintif jika tuntutan mereka ditolak, kerana mereka yang mungkir seperti defendan sebaliknya akan dibenarkan mendapat manfaat daripada pelanggaran mereka sendiri, dan dengan itu menyinggung tanggapan kesaksamaan dan keadilan (lihat perenggan 46 & 50–52).

(6) Berdasarkan keseluruhan keterangan seperti yang dikemukakan, mahkamah tidak dapat mencari secebis bukti yang dikemukakan oleh defendan untuk membuktikan tuntutannya terhadap plaintif. Oleh itu, plaintif tidak sepatutnya bertanggungjawab ke atas ganti rugi yang dialami oleh defendan berkenaan dengan pengurusan Stesen Minyak Kuala Nerus Sdn Bhd. Bagi memberikan keberkesanan kepada pelaksanaan penghakiman Mahkamah Rayuan, mahkamah membenarkan rayuan-rayuan plaintif iaitu (a)–(f), (g)(i) dan (ii) sahaja. Oleh itu, tuntutan balas oleh defendan telah ditolak (lihat perenggan 59 & 61).]

Cases referred to

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (refd)

Bank Simpanan Nasional v Rudysham bin Abdul Raof [2016] MLJU 909; [2016] MLRHU 1118; [2017] 4 CLJ 234, HC (refd)

Farlim Properties Sdn Bhd v Goh Keat Poh & Ors and other appeals [2003] 4 MLJ 654; [2003] 4 CLJ 505, CA (folld)

Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57, CA (refd)

Hatton v Harris [1892] AC 547 (refd)

Kok Hoong v Leong Cheong Kweng Mines Ltd [1964] MLJ 49; [1963] 1 LNS 61, PC (refd)

North West Water Ltd v Binnie & Partners (a firm) [1990] 3 All ER 547, QBD (refd)

OCBC Bank (M) Bhd v Kredin Sdn Bhd [1997] 2 MLJ 544; [1997] 2 CLJ 534, CA (refd)

Pearlman (Veneers) SA (Pty) v Bernhard Bartels [1954] 1 WLR 1457, CA (refd)

Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360; [1990] 2 CLJ Rep 635, HC (refd)

Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16, SC (refd)

Seruan Gemilang Makmur Sdn Bhd v Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin bin Sulaiman) [2010] 8 MLJ 57, HC (refd)

Sundralingam v Ramanathan Chettiar [1967] 2 MLJ 211; [1967] 1 LNS 173, FC (refd)

Syarikat Marak Jaya Sdn Bhd v Syarikat Masinda Sdn Bhd [1991] 2 MLJ 417, HC (refd)

Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777; [1995] 1 CLJ 15, FC (refd)

Thynne v Thynne [1955] P 272, CA (refd)

Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor [2012] MLJU 159; [2012] 5 CLJ 229, CA (refd)

Wawasan Dengkil Properties Sdn Bhd & Ors v Khoo Peng Lai & Ors [2016] 6 MLJ 330; [2016] 9 CLJ 517, CA (refd)

Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal [1993] 2 MLJ 217; [1993] 1 MLRA 260; [1993] 3 CLJ 210, SC (refd)

Legislation referred to

Rules of Court 2012

Abdul Aziz bin Hasan (Nordin Kassim & Aziz) for the plaintiffs.

Wan Azliana bt Wan Adnan (Hisyam bin Yusof with her) (WA Wan Adnan & Assoc) for the defendants.

Abdul Wahab J:

BACKGROUND FACTS

[1] The plaintiffs are the administrators of the estate of Muda bin Hj Draman @ Muda bin Hj Deraman ('the deceased') replacing the previous administrators ie the first and second defendant.

[2] The deceased was the business owner of the two Shell petrol stations at Kuala Nerus and Cabang Tiga. The deceased passed away on 28 April 1985.

[3] Upon the demise of the deceased, Shell had advised the heir of the deceased to establish a company to enable the supply of petrol and to continue the business operation of the deceased.

[4] Following the said advice, two companies were established for the continuation of the deceased's business as follows:

(a) Sykt Minyak Kuala Nerus Sdn Bhd entrusted to carry on the business of Kuala Nerus Shell Petrol Station; and

(b) Sykt Minyak Cabang Tiga Sdn Bhd entrusted to carry on the business of Cabang Tiga Shell Petrol Station.

[5] The defendants were named as the directors as well as shareholders of the said two companies and the first defendant was entrusted with the business management of the two companies.

[6] In 1991, the first defendant claimed that the Kuala Nerus Petrol Station was suffering loss and thus entered into an agreement dated 12 December 1991 ('the agreement') wherein the first defendant agreed to settle the debt owing by the deceased for the total sum of RM450,000 in return the Kuala Nerus Petrol Station be transferred to him whilst Khatijah bt Yusop (deceased) settle the debt owing by the deceased for the total sum of RM150,000 in return the Cabang Tiga Petrol Station be transferred to Khatijah bt Yusop.

[7] The heir of the deceased had filed a civil suit at this High Court through Civil Suit No 22NCVC-35–11 of 2014 to revoke the agreement and to claim for the proceeds of the business to be distributed to the heirs following the *faraid* law.

[8] The High Court had dismissed the said action and the heir of the deceased had proceeded to appeal against the said decision. The Court of Appeal had subsequently overturned the decision of the High Court and ruled, inter alia, that the agreement was unlawful and void.

[9] Dissatisfied with the said decision, the first and second defendant had filed a notice of appeal against the said Court of Appeal decision. The Federal Court had, however, dismissed the first and second defendant's application and upheld the decision of the Court of Appeal.

[10] Following the Court of Appeal's decision, the plaintiffs had proceeded to file an Originating Summons No TA-31NCvC-14–01 of 2018 at the High Court of Kuala Terengganu to replace the first and second defendant as the administrators of the estate of the deceased. The said originating summons was allowed by the High Court, and no appeal was made against the said decision.

[11] The plaintiffs, as the new administrators for the estate of the deceased had issued the letter regarding the order for the appointment of new administrators as well as the Court of Appeal's order to the two companies.

[12] It was the plaintiff's allegation that the first defendant had deliberately handed over the business of the Kuala Nerus Petrol Station in the following condition:

(a) emptied petrol and diesel stocks;

(b) took off and/or removed from the said petrol station premise:

(i) lubricant oil stock;

(ii) four units of computer;

(iii) one unit of air conditioner;

(iv) speaker system;

(v) one unit of scanner machine;

(vi) one unit of the e-post machine;

(vii) company documents;

(viii) safe; and

(ix) selected groceries stock.

(c) left the petrol pump Nos 7, 8, 11 and 12 in a damaged condition; and

(d) withdrew all the company's monies in the company's account before the company was fully audited.

[13] The plaintiffs claimed that they were faced with difficulties in dealing with Shell as they have not been appointed as the director of the Kuala Nerus Petrol Station and Cabang Tiga Petrol Station.

[14] Consequent to the defendants action, the heirs to the deceased had not only failed to enjoy the proceeds of the deceased's business but had also failed to receive any rental payment for the rental of the Kuala Nerus Petrol Station as well as any allowance payment made by Shell to the Kuala Nerus Petrol Station. The plaintiffs had thus filed this action against the defendants.

THE PLAINTIFFS' SUBMISSION

[15] It was the plaintiffs' case that the two companies were established to ensure the continuity of the deceased's business as well as the continuity of the petrol supply by Shell.

[16] It was the plaintiffs' submission that the issue of ownership of the two companies raised by the defendants in the present case had been previously determined by this court and the defendants were thus barred by the principle of res judicata in raising the same issue again.

[17] The plaintiffs submitted that following the Court of Appeal's decision dated 5 July 2017 and the High Court order dated 31 July 2018, the plaintiffs are entitled to take over the management of the two companies and be appointed as directors of the said two companies.

[18] It was also the plaintiff's submission to effectively execute the said court orders, the heirs to the estate of the deceased should be appointed as the shareholders of the two companies and that the share ought to be distributed according to the *faraid* law.

THE DEFENDANTS' SUBMISSION

[19] It was the defendants' main contention that the two companies were separate and distinct legal entities from the deceased and were established after the demise of the deceased as the petrol station operating licenses were automatically terminated upon the demise of the deceased. As such, it was the defendants' submission that the two companies do not form part of the estate of the deceased and the plaintiffs and the heirs of the deceased were thus not entitled to take over the two companies and/or their shares.

[20] The defendants further submitted that the Court of Appeal did not rule on the issue of shares of the two companies and as such the plaintiffs are not entitled to claim for the shares in the two companies.

[21] The defendants had further counterclaimed against the plaintiffs alleging that the plaintiffs had attempted to block and/or interfere with the bank accounts of Kuala Nerus Petrol Station without the first defendant's

A authorisation as well as the in the absence of a valid court order which had caused damages and loss of earnings to the defendants.

COURT'S FINDING

B **[22]** In my view, the main issue arose for the determination of this court concerns one central issue of fact ie the ownership of the two companies.

[23] The plaintiffs had contended that the defences raised by the defendants in support of their claim of ownership of the two companies had been litigated C in full and had been previously determined by the Court of Appeal in its decision dated 5 July 2017.

RES JUDICATA

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[24] The underlying policy is that litigants should not be vexed twice in the same matter and that the public policy requires a finality in litigation. The doctrine of res judicata was succinctly explained in the case of *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783 E where Peh Sweh Chin FCJ (as His Lordship then was) stated as follows:

> What is res judicata? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel per rem judicatum. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate one more the res judicata, because the F judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; *res judicata pro veritate accipitur*. The public policy of the law is that, it is in the public interest that there should be finality in litigation — *interest rei publicae ut sit finis litium*. It is only just that no one ought to be vexed twice for the same cause of action — *nemo debet bis vexari proeadem causa*. Both maxims are the rationales for the doctrine of res judicata, but the earlier maxim has G the further elevated status of a question of public policy.
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> ...
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> The starting point ought to be the celebrated passage by Wigram VC in the case of *Henderson v Henderson* [1843] 3 Hare 100 at p 115 which is:
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> H > The pleas of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.
>
> I ...
>
> To revert to that famous passage set out above, the next step is to state our view on its scope of operation or approach towards such scope which has given rise to certain controversial aspects referred to earlier. Bearing in mind the well-known relevancy of a previous judgment in barring a second suit, eg please see s 40 of the

> Evidence Act 1950, it will be readily understood that when Wigram VC spoke of 'points', the points should actually include causes of action, or all causes of action which one of two parties has against the other, based on, or substantially on the same facts or issues, and not just all issues of law or of fact that are in dispute between the parties. The relevant case law revolves itself into this understanding. Lack of this understanding causes, in our view, a fair share of the confusion in connection with the famous passage of Wigram VC which Lord Shaw in *Hoystead v Taxation Commssioner* [1962] AC 155 at p 170 spoke of as 'settled law' in the Privy Council.
>
> Thus, there are in fact two kinds of estoppel per rem judicatum. The first type relates to cause of action estoppel and the second, to issue estoppel, which is a development from the first type.

[25] In the case of *North West Water Ltd v Binnie & Partners (a firm)* [1990] 3 All ER 547 Drake J (as he then was) stated that cause of action estoppel was confined to cases where the cause of action and the parties were the same in the second suit as they were in the first suit. In such a case the bar is absolute (*OCBC Bank (M) Bhd v Kredin Sdn Bhd* [1997] 2 MLJ 544; [1997] 2 CLJ 534). On the other hand, issue estoppel would involve going over precisely the same issue or point already decided in the first action or refer to an issue that has been previously litigated and determined between the same parties and the same issue is raised in a subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant and one of the parties seeks to reopen the issue. The High Court decision in *Seruan Gemilang Makmur Sdn Bhd v Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin bin Sulaiman)* [2010] 8 MLJ 57 clearly shows that the requirements of issue estoppel are that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised and that the same question had been decided.

[26] In deciding whether a matter is caught by res judicata, the earlier judgment must with precision, determine the point in issue. Support for this proposition can be found in the decision of the Court of Appeal in the case of *Farlim Properties Sdn Bhd v Goh Keat Poh & Ors and other appeals* [2003] 4 MLJ 654; [2003] 4 CLJ 505 where it was held as follows:

> When the plea of res judicata is raised, it is necessary to identify with precision the issue that was decided in the earlier proceeding. In other words, the earlier judgment must, necessarily and with precision, determine the point in issue.

See also the case of *Kok Hoong v Leong Cheong Kweng Mines Ltd* [1964] MLJ 49; [1963] 1 LNS 61.

[27] Applying the above legal principles to the present suit, it is clear that in considering the applicability of the doctrine of res judicata, a careful

comparison of the two sets of proceedings must be undertaken. The object of such an exercise is to answer whether the present court is invited to deal with exactly the issue already dealt with by the previous court (see *Wawasan Dengkil Properties Sdn Bhd & Ors v Khoo Peng Lai & Ors* [2016] 6 MLJ 330; [2016] 9 CLJ 517).

[28] Upon careful evaluation of the pleadings made by parties in the previous suit, it appears to me as clear as day that both cases arose from the same set of facts, background, issues and circumstances. The Court of Appeal had in its decision dated 30 October 2017 stated in clear terms that the same petrol business that was conducted by the deceased had been continued but with the variations, as requested by Shell ie the setting up of the companies as follows:

> [19] We come now to the final issue which merited consideration. This concerned the finding by the learned judge that the business of the two petrol stations ended with the death of the deceased and the subsequent setting up of the new business by the defendants. What remained, it was found by the learned judge, were only the debts due as left behind by the deceased which had to be dealt with by all the beneficiaries. In other words, the profits generated by the new business set up by the defendants were no longer tied to the estate of the deceased and hence the said profits could not be divided among the beneficiaries as contended by the plaintiffs.
>
> [20] With respect, we are compelled to observe that this finding overlooks the important fact that in the case of the Kuala Nerus petrol station, the deceased had used his own land to develop the station. It was only the petrol station at Cabang Tiga which sat on the land of the petrol company called Shell. It cannot be denied that the land of the deceased, on which the Kuala Nerus petrol station was situated, became estate property upon the death of the deceased. It was also obvious to us that the same business that was conducted by the deceased before his death continued but with the variations as requested by Shell. Hence, the learned judge was plainly in error when he declared that the business, and consequently the land on which the business was situated, was not part of the estate.

[29] The Court of Appeal had further ordered that the administrators of the estate of the deceased be authorized to take over the business management of the petrol stations.

[30] Dissatisfied with the Court of Appeal's decision, the defendants proceeded to file a notice of motion to appeal to the Federal Court raising, inter alia, the following issues:

> (c) Mahkamah Rayuan Malaysia juga telah terkhilaf dari segi undang-undang dan/atau fakta apabila membenarkan tuntutan responden-responden/plaintif-plaintif untuk mengambil alih pengurusan perniagaan Stesen Minyak Shell Cabang Tiga dan Stesen Minyak Shell Kuala Nerus sedangkan syarikat-syarikat sendirian berhad yang ditubuhkan untuk mengendali kedua-dua stesen minyak Shell tersebut adalah merupakan entiti yang berasingan (separate legal entity).

(d) Mahkamah Rayuan Malaysia telah terkhilaf dari segi undang-undang dan/atau fakta apabila membenarkan tuntuan responden-responden/plaintif-plaintif untuk pentadbir mengambil alih pengurusan perniagaan terhadap Stesen Minyak Shell Cabang Tiga dan Stesen Minyak Shell Kuala Nerus sedangkan syarikat-syarikat sendirian berhad yang telah ditubuhkan oleh pemohon-pemohon untuk menguruskan serta mengendalikan kedua-dua stesen minyak tersebut tidak pernah dinamakan sebagai pihak-pihak di dalam prosiding ini.

[31] The Federal Court had, however, through its decision dated 10 January 2018 unanimously rejected the defendants' notice of motion.

[32] Clearly, the issues which the defendants sought to litigate have already been litigated as evident from the above findings of the Court of Appeal which was final. It was thus binding on the court and all parties and may not be reopened the same (see *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57).

[33] Subsequent to the Federal Court's decision, this court had in its decision in Civil Suit No TA-31NCvC-14–01 of 2018 allowed the plaintiff's claim for a change of administrators of the estate of the deceased and for the petrol stations businesses to be included as the additional estate of the deceased.

[34] The conclusive finding of the High Court in Civil Suit No TA-31NCvC-14–01 of 2018 was never appealed against by the defendants and was therefore binding on the defendants. If the defendants were dissatisfied with this decision, an appeal ought to have been filed to the Court of Appeal. It is untenable for the defendants to raise the same issues over and over again in the same court in the same case.

[35] For the foregoing reasons above, I agree with the plaintiffs' contention that the defence raised by the defendants was caught by the doctrine of res judicata. It is therefore in my considered view that the defendants are estopped from repeatedly raising issues regarding the ownership status of the companies.

[36] Notwithstanding what has been stated above, in view of the Federal Court's decision in rejecting the defendant's motion to appeal, this court is thus bound by the decision of Court of Appeal (see *Sundralingam v Ramanathan Chettiar* [1967] 2 MLJ 211; [1967] 1 LNS 173).

[37] Moreover, the defendants had in the instant case admitted that the companies were established by the first defendant for the purpose of continuing the petrol station businesses of the deceased as advised by Shell Malaysia Trading Sdn Bhd. It is in my considered opinion that the first defendant, in setting up the said companies, had merely acted in his capacity as

an administrator of the estate of deceased for the benefit of the beneficiaries as evident from the second plaintiff's testimonial evidence in the previous suit as follows:

> S: Adakah selepas arwah Hj Muda meninggal dunia Tn Hj masih meneruskan perniagaan stesen minyak tersebut?
>
> J: Ya, tapi atas nama syarikat kerana pihak Shell tidak boleh lagi membekalkan minyak secara runcit menggunakan lesen arwah Hj Muda. Shell tidak mahu berurusan atas nama arwah tetapi mencadangkan kami menubuhkan syarikat. Lalu tertubuhlah dua syarikat Stesen Minyak Kuala Nerus Sdn Bhd untuk Stesen Minyak Kuala Nerus dan Stesen Minyak Cabang Tiga Sdn Bhd untuk Stesen Minyak Cabang Tiga.
>
> ...
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> S: Ada tak tujuan lain syarikat ini ditubuhkan selain untuk terima bekalan minyak?
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> J: Tujuan syarikat ditubuhkan kerana syarikat yang sedia ada telah dikira mati dengan meninggalnya pemilik kerana syarikat sebelum itu dikira *sole proprietor*. Jadi setelah pemilik mati, jadi dengan sendirinya syarikat mati. Jadi untuk meneruskan perniagaan, satu syarikat baru perlu ditubuhkan untuk melindungi kepentingan semua waris.

[38] Upon careful scrutinisation of all evidence, as adduced before me particularly the Court of Appeal's decision, I find no ambiguity in the Court of Appeal's decision and it is my considered view that it was the intention of the Court of Appeal all along that the companies as established for the purpose of the business management of the petrol stations be taken over by the newly appointed administrators of the deceased's estate.

THE PLAINTIFF'S RIGHT TO TAKE OVER THE PETROL STATION BUSINESSES

[39] Based on the foregoing reasons above and in view of the Court of Appeal's decision dated 5 July 2017 as well as the High Court's decision dated 31 July 2018, it is in my conclusive finding that the plaintiffs were conferred with the right to manage the businesses of the petrol stations.

[40] Based on the facts of the present case and having thoroughly scrutinised evidence as adduced before me, it is my observation that the defendants had failed and/or refused to cooperate, comply and give effect to the terms of the judgment order made by the Court of Appeal making the said Court of Appeal's judgment unworkable.

[41] The defendants had not only failed to cooperate but clearly, based on their conduct over the years, they were delaying and had frustrated the terms of

the Court of Appeal's judgment. It was also clear from their statement of defence that the defendants had no interest at all to comply with the Court of Appeal's judgment.

[42] Clearly from the totality of the evidence adduced before me, the defendants do not have the slightest intention to abide by the terms of the Court of Appeal's judgment. In doing so they had abused the process of the court. The courts have inherent jurisdiction to prevent such abuse of the process: *Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd* [1993] 3 MLJ 16.

[43] It is in my considered view that as parties are duty-bound to obey an order of the court, until and unless it is varied or set aside, disobedience of such order may subject the defaulting party to committal proceedings (see the Supreme Court's decision in *Wee Choo Keong v MBF Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217; [1993] 1 MLRA 260; [1993] 3 CLJ 210), the defendants were certainly estopped from denying the plaintiffs' their legal right to take over the business of the companies in managing the petrol station.

[44] In the absence of any legally recognised basis to impugn the continued validity of the Court of Appeal's judgment which remains resolutely unchallenged and unimpaired, its terms must continue to be binding and govern the relationship between the plaintiffs and the defendants in respect of the deceased's petrol station businesses. Any attempt by the defendants to depart or move away from strictly adhering to the same would thus tantamount to a form of non-compliance, if not an outright transgression. As it transpired, the defendants had indeed failed to abide by the terms of the Court of Appeal's judgment.

[45] I also do not find that the arguments advanced and the averments made by the defendants to be anything but a bare assertion without evidential support.

WHETHER THE PLAINTIFFS ARE ENTITLED TO THE CLAIMS SOUGHT AGAINST THE DEFENDANTS

[46] I have kept an open mind in considering the above case and I have read the whole text of the case. Having read in details, it is in my considered view that the plaintiffs are seeking to give effect to the Court of Appeal's judgment particularly prayers (a), (aa), (b), (c), (d), (g)(i) and (g)(ii) which are necessary to enable the plaintiffs to take over the business of the petrol stations effectively.

[47] Whether the court has the discretion to amend any orders at any time to reflect what had been ordered in fact was explained in *Syarikat Marak Jaya Sdn*

Bhd v Syarikat Masinda Sdn Bhd [1991] 2 MLJ 417, where Peh Swee Chin J had held that before an order has been perfected the court has inherent jurisdiction to review the matter. However, when an order had been extracted and perfected, the court can still review the same but only with the consent of both parties, or as expressly provided under the Rules of Court. However with respect to this power to review the order, the court said this:

> ... the nature of this power is not a blanket one; it is subject to a restriction which is, to correct an error in the order itself where the order made does not express the court's manifest intention in the matter or in other words it is not conformable with such manifest intention of the court. It does not allow a court to make a fundamentally different order. The power is exercised concurrently with the express power to correct any clerical error, or error arising from accidental slip or omissions as expressly conferred by O 20 r 11 of the Rules of the High Court 1980.

[48] It is also established principle that the court has inherent power to vary its own orders so as to carry out its own meaning and to make its meaning plain — see *Thynne v Thynne* [1955] P 272 (CA), *Pearlman (Veneers) SA (Pty) v Bernhard Bartels* [1954] 1 WLR 1457 and other cases cited in the *Supreme Court Practice 1993*, Vol 1 Part 1 (London Sweet & Maxwell).

[49] In *Hatton v Harris* [1892] AC 547 Lord Watson said:

> Where an error of that kind has been committed it is always within the competency of the court, if nothing has intervened which would render it inexpedient or inequitable to do so, to correct the record in order to bring in harmony with the order which the judge obviously meant to pronounce.

[50] On the strength of the above authorities, it is therefore in my considered view that the Court of Appeal's judgment remained absolutely intact and binding on the parties, the plaintiffs in the present case are not seeking to vary or set aside the said Court of Appeal judgment but merely seeking further directions from this honourable court to enforce the Court of Appeal judgment. This court had full inherent jurisdiction and powers to compel the performance in obligation and terms by the parties to the said Court of Appeal judgment.

[51] Notwithstanding what has been stated above, it is, however, this court's considered opinion that the plaintiffs are not entitled to prayer (g)(iii) and (iv), as the said prayers would tantamount to fundamentally different orders than that granted by the Court of Appeal.

[52] In the final analysis, considering the circumstances of the instant case, and the evidence made available before the court, it cannot be emphasised enough that in this case, a clear injustice would be occasioned to the plaintiffs

if their claim is dismissed, for defaulters such as the defendants would instead be allowed to benefit from their own breach, and thus offends the notion of fairness and justice (see the case of *Bank Simpanan Nasional v Rudysham bin Abdul Raof* [2016] MLJU 909; [2016] MLRHU 1118; [2017] 4 CLJ 234).

THE DEFENDANTS COUNTERCLAIM

[53] The defendants had in its counterclaim sought for, inter alia, a declaration that the Stesen Minyak Kuala Nerus Sdn Bhd owed the first defendant a total sum of RM513,843.69 as at 31 January 2017.

[54] It is axiomatic that a plaintiff seeking substantial damages has the burden of proving both the fact and the amount of damages before he can recover (see the case of *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 2 CLJ Rep 635).

[55] This is a matter of proof, and the evidential burden falls on the defendants to prove that the company Stesen Minyak Kuala Nerus Sdn Bhd owed the first defendant a total sum of RM513,843.69. It is for the defendants to bring evidence into court to support its claim and for the plaintiffs to dispute such claim.

[56] It is trite law that the burden of proof incumbent on a party claiming damages is to place before the court sufficient evidence of the loss it has suffered as a result of the breach committed by the contract breaker. In order for the respondent to be able to claim for damages, the respondent must prove the damage and it is not enough to merely write down the particulars and rely on the same. *McGregor on Damages* (Sweet & Maxwell, 18th Ed, 2009) provides succinctly for this requirement at para 8–001:

> A claimant claiming damages must prove his case. To justify an award of substantial damages he must satisfy the court both as to the fact of damage and as to its amount. If he satisfies the court on neither, his action will fail, or at the most he will be awarded nominal damages where a right has been infringed. If the fact of damage is shown but no evidence is given as to its amount so that it is virtually impossible to assess damages, this will generally permit only an award of nominal damages; this situation is illustrated by *Dixon v Deveridge* [1825] 2 C & P 109 and *Twyman v Knowles* [1853] 138 ER 1183.

[57] In the Federal Court case of *Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777; [1995] 1 CLJ 15, it was held as follows:

> Before we embark upon a detailed consideration of the specific issues which arise for decision, there are three preliminary matter which, at the outset, require emphasis. Firstly, that part of the judgment of the judge which provides that the vendor shall pay to the purchaser damages to be assessed for wrongful termination of the

agreement with costs and that Tan Sri Khoo and the vendor shall pay to the purchaser damages to be assessed for breaches of the undertakings, even though affirmed on appeal, can in no way relieve the purchaser of satisfying the fundamental requirement of having to prove its loss (if any) arising from those breaches. To hold otherwise would amount to dispensing with proof of quantum altogether, and that cannot be the law. In so saying, we are reminded of the words of Lord Goddard in *Bonham-Carter v Hyde Park Hotel Ltd* [1948] 64 TLR 177:

> ... plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, so to speak, throw them at the head of the court, saying: 'This is what I have lost, I ask you to give me these damages'. They have to prove it.

This dictum was referred to and applied by our Court of Appeal in *John v Dharmaratnam* [1962] 1 MLJ 187; [1961] 1 LNS 35.

[58] In *Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor* [2012] MLJU 159; [2012] 5 CLJ 229, the court held as follows:

> It is trite law that the task of accounts and assessment of damages is an exercise of judicial discretion. Such discretion is based is a judicial one, as it is not exercised based on whims and fancies, but be reference, guidance and application of established judicial principles and of course having regard to all the facts and evidence adduced before the officer or the judge who undertakes the assessment.

[59] Based on the totality of evidence as adduced before this court, I find not a shred of evidence was adduced by the defendants to establish its claim against the plaintiffs. It is, therefore, my conclusive finding that the plaintiffs ought not to be held liable for damages suffered by the defendants in respect of the management of the Stesen Minyak Kuala Nerus Sdn Bhd.

CONCLUSION

[60] In the light of the foregoing and in the upshot, after hearing the submission by both parties, it is this court's decision that the plaintiffs have successfully proven their cases.

[61] In order to give efficacy to the execution of the Court of Appeal's judgment, this court hereby allow plaintiffs' prayers (a)–(f), (g)(i) and (ii) only. This court further order that the defendants pay the plaintiffs cost of this action.

[62] On the counterclaim by the defendants, with the findings of this court as above, I hereby dismissed the defendants' counterclaim.

Plaintiffs' prayers (a)–(f) and (g)(i)–(ii) allowed; and defendants' counterclaim dismissed.

Reported by K Selvaraju